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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/523,193	03/10/2000	Sean Matthew Doherty	169.1649	4782

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EXAMINER	
CHAMPAGNE, DONALD	

ART UNIT	PAPER NUMBER
3622	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/523,193

Applicant(s)

DOHERTY, SEAN MATTHEW

Examiner

Donald L. Champagne

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11, 14-24, 26 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11, 14-24, 26 and 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Withdrawal of Finality and Entry of Amendments*

1. For reasons given in the interview summary made of record on 11 May 2006, the finality of the prior art rejection mailed on 29 November 2005 has been withdrawn. The specification amendment filed on 29 March 2006<sup>1</sup> (pp. 2-4 and Fig. 1) is hereby entered. That amendment overcomes the rejection under 35 USC § 112 in the 29 November 2005 Office action (para. 2 and 3).
2. The claim amendment filed on 23 August 2006 has been entered, and the following non-final rejection is based on that amendment. The claim amendment filed on 29 March 2006 is ignored as moot because it appears to be wholly incorporated into the 23 August 2006 amendment.
3. As noted in 37 CFR 1.111, the Office does not enter "supplemental" amendments as a matter of right. The examiner chose to do so in this case because the amendment clarifies and therefore simplifies the issues for appeal.

### *Claim Rejections - 35 USC § 102 and 35 USC § 103*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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<sup>1</sup> That is the amendment "dated March 28, 2006", according to p. 1 of the filing on 23 August 2006. Applicant is advised that the Office's official date, the filing date, is the date of receipt unless applicant uses special procedures to make the date of mailing the filing date (37 CFR 1.5, 1.6 and 1.8).

Art Unit: 3622

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-11, 14-24, 26 and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Marsh et al. (US005848397A).

7. Marsh et al. teaches (independent claims 14, 26, 28, 29, 32 and 33) a computer-executable method for scheduling items of information for display/presentation of an output device, an information processing apparatus for implementing said method, and a computer readable medium storing said method, the method comprising:

(a) scheduling items of information (*advertisements*) in a schedule (the time and sequence by which each ad is to be shown, according to its *scheduling criteria*, col. 9 lines 40 to col. 10 line 20) in accordance with values of priorities (said *scheduling criteria*), said scheduling determining an order for displaying/presenting said items of information (col. 8 lines 63-66 and in detail at col. 10 line 21 to col. 12 line 64);

(b) generating a user interrupt (to *transmit new banner advertisements*) in response to a user interacting with the user interface (*when a user goes on-line to retrieve e-mail messages*, col. 13 lines 58-62);

(c) sorting the advertisements (col. 14 lines 52-55), which reads on clearing the schedule of items of information in response to the user interrupt<sup>2</sup>;

(d) monitoring the time between keystrokes (col. 9 lines 28-32), which reads on estimating a time when the user will finish interacting with the user interface (the monitoring interval reads on the time estimate), said estimating being performed repeatedly until the user interaction with the user interface is finished;

(e) rescheduling items of information for display/presentation in accordance with the values of the priorities/*scheduling criteria* (col. 9 lines 40-49; note that each queue is sorted every time that it becomes *current*); and

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<sup>2</sup> Creating a new schedule by sorting all the ads in the current queue (col. 9 lines 40-49) inherently reads on "clearing" (and re-establishing) the schedule.

Art Unit: 3622

(f) displaying the information as scheduled (col. 9 lines 17-19) if the user is not interacting with the user interface at the estimated time.

8. Marsh et al. also teaches at the citations given above claims 2-4, 6-8, 15, 17-19, 30 and 31.
9. Marsh et al. also teaches claims 5 and 16 (col. 15 line 36); 9 and 20 (col. 15 lines 54-56); and 10, 11, 21 and 22 (col. 15 lines 56-62).
10. Marsh et al. also teaches claims 23 and 24 as the process described from col. 8 line 63 to col. 9 line 27, where the *highest priority* reads on a maximum priority.
11. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al. (US005848397A). Marsh et al. does not teach selecting items that require minimum compile times. Because this would minimize cost, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Marsh et al. that items with minimum compile times be selected for reschedule after user interruptions.

### **Conclusion**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
13. The examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for all *formal* fax communications is 571-273-8300.
14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
15. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue

Art Unit: 3622

prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

8 April 2007

**DONALD L. CHAMPAGNE**  
**PRIMARY EXAMINER**

Donald L. Champagne  
Primary Examiner  
Art Unit 3622